

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LINDA LEHMAN,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:99CV2272(CFD)
	:	
UNIVERSITY OF HARTFORD DEFINED :	:	
CONTRIBUTION RETIREMENT PLAN, :	:	
ET AL.,	:	
Defendants	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Linda Lehman, brings this action against the defendants, the University of Hartford Defined Contribution Retirement Plan and Andrew Buonanno,¹ pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.*, alleging wrongful denial of benefits and breach of fiduciary duty with regard to her late ex-husband's pension benefit plan. The defendants have moved for summary judgment [Doc. #42].

I. Facts²

Linda Lehman ("Lehman") married Richard Brown ("Brown") on October 9, 1980. From September 1981 through June 1992, Brown was an employee of the University of Hartford in Hartford, Connecticut and a participant in the University of Hartford's employee pension benefit plan ("the Plan"). In 1981, Brown designated Lehman as a beneficiary under the Plan. In April and July 1987, however, while Brown and Lehman were involved in divorce proceedings, Brown

¹Buonanno, an employee of the University of Hartford, is alleged to be a fiduciary of the Plan described below.

² The following facts are based on the parties' Local Rule 9(c) Statements and other summary judgment papers and are undisputed unless otherwise indicated.

completed two change of beneficiary designation forms, indicating he wished to remove Lehman as a beneficiary and name instead Brown's and Lehman's two children. The portions of the two change of beneficiary designation forms which provided for spousal consent were not completed. On September 28, 1987, Lehman and Brown divorced. After that divorce, on March 16, 1989 and April 7, 1989, Brown completed two more change of beneficiary designation forms, designating a trust to receive the death benefit under the Plan with Brown's and Lehman's two children as beneficiaries of that trust (the "children's trust"). Brown died on January 25, 1994. After his death, the Plan's fund sponsor, the Teachers Insurance and Annuity Association-College Retirement Equities Fund ("TIAA-CREF"), paid out Brown's death benefit to the children's trust. On May 30, 1999, Lehman made a claim for death benefits under the Plan. The claim was rejected by the defendants. Lehman then filed the present action.

Lehman's complaint consists of two counts. Count One is a claim for benefits under ERISA in which she asserts that the Plan wrongfully denied her claim for death benefits. Count Two is a claim for breach of fiduciary duty under ERISA. According to Lehman, pursuant to § 205(g) of ERISA (and in order for a plan to be tax-qualified under § 401(a)(11) of the Internal Revenue Code), a plan must require that all changes in beneficiary designations removing a spouse set forth the spouse's written consent. Moreover, argues Lehman, the Plan itself required spousal waivers to be executed by the beneficiary spouse in the event that a beneficiary other than a spouse was designated. The defendants' failure to obtain such a waiver, according to Lehman, wrongfully denied her benefits under the Plan in violation of ERISA § 502, 29 U.S.C. § 1132 and breached a fiduciary duty owed to her under ERISA § 404, 29 U.S.C. § 1104.

Lehman seeks the equitable remedy of "the voiding of any beneficiary designation other

than the one effective on January 1, 1987.” Lehman also seeks a distribution of the assets in Brown’s account as of the date of his death in accordance with the beneficiary designation effective January 1, 1987, as well as attorney’s fees, costs, and prejudgment interest.

The defendants have moved for summary judgment on the basis that Lehman lacks standing to raise her claims, Lehman’s claims are barred by the applicable statutes of limitation, and Lehman has failed to state a cause of action upon which relief can be granted.³

II. Summary Judgment Standard

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).

“A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the facts as to which there is no issue warrant judgment for the moving party as a matter of law.” Quinn v. Green Tree Credit Corp., 159 F.3d 759, 765 (2d Cir. 1998) (citation omitted). A dispute regarding a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992). After discovery, if the nonmoving party has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,” then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The Court resolves “all ambiguities and draw[s] all inferences in favor of the

³In their Answer, the defendants also assert that Lehman’s claims are barred by the doctrines of laches and collateral estoppel, and that Lehman has failed to exhaust her administrative remedies, as required by ERISA.

nonmoving party in order to determine how a reasonable jury would decide.” Aldrich, 963 F.2d at 523. Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991).

III. Discussion

A. Standing

The defendants argue that Lehman lacks standing to bring the present lawsuit because she is neither a participant nor a beneficiary under 29 U.S.C. § 1132, the civil enforcement provision of ERISA.⁴ Lehman responds that, “certainly, *while married and while designated as a beneficiary*,” she was a “beneficiary” under ERISA. Accordingly, Lehman argues, she is entitled to bring a cause of action under ERISA for wrongful denial of benefits or for breach of fiduciary duty resulting from actions that occurred while she was a beneficiary. See Pl.’s Mem. Opp’n at 19-20 (quoting Riordan v. Commonwealth v. Edison Co., 128 F.3d 549, 551 (7th Cir. 1997) (“[T]he term ‘Beneficiary’ . . . is sufficiently broad to include the ex-wife of a participant of a plan, when she seeks benefits under a plan.”)).

The Court concludes that Lehman has standing to bring the instant action. First, she was, prior to 1987, a beneficiary under the Plan. Second, whether she was an actual beneficiary under the Plan at the time of the distribution of the benefits turns on the merits of the claim, not jurisdiction. See Riordan, 128 F.3d at 552. Accordingly, she has made a showing sufficient to confer standing under ERISA.

⁴The parties do not dispute that ERISA applies to the instant benefits plan.

C. Wrongful Denial of Benefits and Breach of Fiduciary Duty

As to the defendants' argument that Lehman's complaint fails to state a claim upon which relief can be granted, the defendants first assert that "nothing in ERISA or the Plan Document required the Plan to obtain a spousal waiver at each time Brown completed a Designation of Beneficiary Form," apparently referring to the post-divorce beneficiary designations. Defs.' Rep. Mem. at 5. Second, assert the defendants, even assuming there could have been an ERISA violation as to the two 1987 pre-divorce designations, "whatever the effect of the Designation of Beneficiary Forms that Brown completed during his marriage to plaintiff, because he made valid, *post-marital* beneficiary designations, it is irrelevant whether the change in beneficiary designation during his marriage was effective or not." *Id.* at 5-6. Moreover, the defendants argue, Lehman was not a "surviving spouse" at the time the benefits were paid out. Accordingly, there is no nexus between a failure on the part of the defendants to comply with ERISA with regard to obtaining spousal consent in 1987 and any alleged harm, because Lehman would not have received the benefits in 1994 even if a spousal consent form had been properly treated in 1987, before Lehman and Brown's divorce.

In response to the defendants' first assertion, Lehman argues that both the Plan, by its terms and through Plan documents, provides that a change in beneficiary designation is not to be effective unless there is a qualifying spousal consent, and ERISA also requires such spousal consent concerning the "qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both)."⁵ 29 U.S.C. § 1055(c)(2). The 1987

⁵ERISA provides that spouses of plan participants are entitled to fifty percent of the annuity benefit of the participant upon the death of the participant. This spouse's benefit may only be waived in writing by the spouse. See discussion *infra* pp. 7-8; see also Stephen R. Bruce,

changes in beneficiary designations were invalid, Lehman argues, because they lacked a qualifying spousal consent. Pl.’s Mem. Opp’n at 9 (citing 29 U.S.C. § 1055(c)(2), Butler v. Encyclopedia Britannica, 41 F.3d 285, 293 (7th Cir. 1994) (“ERISA provides that if a pension plan allows a participant to waive a qualified joint and survivor annuity or a qualified preretirement survivor annuity then the plan must provide that such a waiver will not take effect unless the participant spouse consents in writing to the waiver.”), and Rice v. Rochester Laborers Annuity Fund, 888 F. Supp. 494, 497-98 (W.D.N.Y. 1995)). By permitting the change of beneficiary designations in 1987, Lehman argues, the defendants breached their duty to her as a spouse of a participant and also should have paid the spousal death benefit to her after Brown’s death.

In response to the defendants’ argument that she suffered no harm as a result of their failure to obtain her consent in 1987 because the beneficiaries were properly changed after the divorce, Lehman argues that she could have obtained “actual in fact beneficiary status under the terms of the plan via the mechanism of QDRO (qualified domestic relations order)”⁶ when notified about Brown’s intent to change the beneficiary, thus securing her right to the benefits. Pl.’s Mem. Opp’n at 20. In other words, Brown could have preserved her spousal benefit as part of the

Pension Claims: Rights and Obligations 259 (2d ed. 1992). The purpose of these ERISA provisions is to protect spouses’ interests in participants’ benefits and require a knowing consent before any reduction or elimination of such interests. See Rice v. Rochester Laborers Annuity Fund, 888 F. Supp. 494, 498 (W.D.N.Y. 1995).

⁶A QDRO is a state court domestic relations order “which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan” 29 U.S.C. § 1056(d)(3)(B)(I)(i). Because ERISA does not preempt QDROs, a divorce decree or related state-court order which qualifies as a QDRO can protect a spouse’s or child’s interests under the plan from being disrupted and provides plan benefits post-divorce. See Metropolitan Life Ins. Co. v. Bigelow, 283 F.3d 436, 440 (2d Cir. 2002).

divorce proceedings in state court.

Section 205(c) of ERISA, 29 U.S.C. § 1055(c), part of the “Retirement Equity Act”

which amended ERISA in 1984, provides, in relevant part:

(c) Plans meeting requirements of section

- (1) A plan meets the requirements of this section only if--
 - (A) under the plan, each participant--
 - (i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and
 - (ii) may revoke any such election at any time during the applicable election period, and
 - (B) the plan meets the requirements of paragraphs (2), (3), and (4).
- (2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless--
 - (A) (i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or
 - (B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

29 U.S.C. § 1055(c). Thus, § 1055(c)(2) provides that a benefit plan such the one in which Brown participated requires spousal consent before the participant can validly designate a beneficiary other than the spouse of the plan participant.

It is undisputed that the defendants did not obtain such consent at the time Brown submitted the beneficiary designation changes in 1987. Thus, those beneficiary designations were invalid at that time. As a consequence, if the benefits had been distributed according to those invalid beneficiary designations in 1987 before the divorce, the Plan would have remained liable to Lehman for any rights she had under the Plan as Brown's spouse. See Rice, 888 F. Supp. at 498. However, the benefits were not distributed in 1987 under those designations; they were distributed after Brown's death in 1994. The 1989 designations were valid notwithstanding the lack of Lehman's consent because Lehman was no longer Brown's wife in 1989 and thus no consent was required at that time. Accordingly, Lehman has failed to create a genuine issue of material fact that she was wrongfully denied benefits under the Plan.

The Court also finds that Lehman has failed to create a genuine issue of material fact that the defendants' actions amounted to a breach of fiduciary duty under ERISA § 404, 29 U.S.C. § 1104.⁷ Lehman argues that the defendants' failure to obtain her consent before allowing Brown

⁷Section 1104 provides, in relevant part:

(a) Prudent man standard of care

- (1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
 - (A) for the exclusive purpose of:
 - (i) providing benefits to participants and their beneficiaries; and
 - (ii) defraying reasonable expenses of administering the plan;
 - (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
 - (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
 - (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with

to change his beneficiary designation in 1987 breached the standard of care which requires the defendants to administer the Plan in accordance with its terms and ERISA. As noted above, the Plan and ERISA require spousal consent before changes in beneficiary designations may be given effect. However, Lehman has not demonstrated that the 1987 changes in beneficiary designations were ever given effect. No distribution was made according to those designations. Furthermore, neither 29 U.S.C. § 1055(c)(2), 29 U.S.C. § 1104, nor decisions interpreting these provisions set forth a duty of notice on the part of a plan to inform a spouse of an insured's attempt to designate a new beneficiary without spousal consent. Thus, even assuming that the defendants should have rejected the 1987 beneficiary forms at that time because they lacked spousal consent, no breach of fiduciary duty occurred and no harm was suffered by Lehman as a result.

Finally, as to Lehman's claim that the defendants' actions somehow affected the financial terms of her state court divorce action or her ability to obtain a QDRO, Brown disclosed his interest in the Plan benefits in a financial affidavit dated September 28, 1987 (indicated as "TI-CREF (teachers ret. fund) (value undetermined)") and provided it to Lehman as part of the divorce proceedings prior to the entry of the divorce decree. Moreover, as noted above, the defendants had no duty under ERISA to notify Lehman of the ineffective 1987 designation changes. Thus, Lehman has also not created a genuine issue of material fact that her failure to obtain beneficiary status under the terms of the Plan through a QDRO or her failure to adjust the terms of her divorce settlement were the result of a breach of a fiduciary duty on the part of the

the provisions of this subchapter and subchapter III of this chapter.

defendants.⁸

III. Conclusion

For the foregoing reasons, the defendants' motion for summary judgment [Doc. #42], is GRANTED.

The Clerk is directed to close the case.

SO ORDERED this ____ day of July 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

⁸As the Court finds that Lehman has not created a genuine issue of material fact with regard to her ERISA claims, the Court declines to reach the defendants' alternative argument that Lehman's claims are barred by the applicable statutes of limitation.